

June 21, 2018

Hon. Judge Vincent Chhabria
United States District Court for the
Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

RE: *In Re Facebook, Inc., Consumer Privacy User Profile Litigation*
MDL No. 2843/Case No. 18-md-02843-VC

Dear Judge Chhabria,

Through filing of this letter and pursuant to Pretrial Order No. 1, I respectfully request appointment as lead counsel or co-lead counsel in the consumer privacy litigation against Facebook and related defendants in the above-captioned consolidated matter. I bring a different background, experience, and perspective than many of the plaintiffs' counsel in these consolidated complaints, and I believe those differences will materially benefit the plaintiffs.

i) *Professional experience with MDLs and with the subject matter of this litigation.* I honed my cybersecurity and data privacy expertise during thirteen years at the National Security Agency, where I served as Associate General Counsel for Intelligence Law. As AGC/IL, I provided legal advice on NSA's foreign intelligence operations, privacy and civil liberties programs, and new technology development. I remain the only woman, and the only person of Hispanic heritage, who has ever held that position. In 2016, I transitioned that unique experience into the private sector when I joined Saul Ewing Arnstein & Lehr ("SEA&L") as a partner and chair of the Cybersecurity and Privacy Practice.

Based on this extensive, privacy-focused expertise, in early 2017, Sen. Mark Warner of Virginia, Vice Chair of the Senate Select Committee on Intelligence (SSCI), asked me to serve as Senior Minority Counsel for the Russia Investigation – which focused on Russian interference in the 2016 U.S. elections, including the role of social media platforms and data analytics companies, including the defendants in these matters, in the acceleration of misinformation, propaganda and fake news, and the use of personal information for micro-targeting of individuals for purposes of commercial advertising and political influence.

In May 2018, I returned to SEA&L as chair the firm's Cybersecurity and Privacy Practice, a subset of our 150+ lawyer litigation department. Our seasoned class action trial lawyers have extensive MDL experience, including representation of:

- A national bank in a multi-district class action arising from overdraft fee practices.
- A maker of alleged tainted biologics in hundreds of cases in state and federal court spanning more than a decade of MDL and class action proceedings.
- A national reward program and marketing company in defense against a putative nationwide TCPA class action arising from alleged impermissible text messages.
- An alleged "robo-signer" of mortgages in the defense of DOJ and state attorney general investigations and related civil class actions.
- A New Jersey technology company in a putative nationwide class action arising from the Federal Worker Adjustment Retraining Notification Act.
- A retail company in defense of threatened ADA Title III and state privacy class actions involving accessibility of the company's websites.
- A medical device manufacturer in multi-district litigation proceedings that allege a defect in defendant's heater-cooler system caused multiple wrongful deaths.
- A national, high profile food manufacturer facing multi-district antitrust litigation.

In addition to SEA&L's deep bench of litigators and privacy lawyers, my personal experience demonstrates greater familiarity with the substantive issues in these cases than many of the other very capable lawyers who have filed complaints. As noted more fully on my attached resume, I am frequently asked to speak at major cybersecurity and privacy conferences; I have published numerous articles in this field; and my substantive experience with cybersecurity and data privacy law goes back fifteen years. In addition, I have examined in depth the specific allegations relating to these complaints, and I understand deeply both the legal impact of the defendants' data privacy failures as well as the public policy implications.

ii) Familiarity with the claims before the Court. I have had extensive, direct experience dealing with the Stored Communications Act and other laws relevant to these matters. I have reviewed the many complaints filed in this consolidated litigation and will continue to review news accounts related to these matters. As noted in (i) above, through my work on SSCI, I became intimately familiar with the ways in which the personal data of social media platforms is leveraged for advertising and other micro-targeting. As a result, I am already acquainted with the testimony of current and former executives from Facebook and the Cambridge Analytica defendants in front of the U.S. Congress and U.K. Parliament. I have a unique, experience-based grasp of the relevant facts as well as the legal theories underlying these claims.

iii) Present and future ability to commit to time-consuming litigation. These consolidated cases may well be the most consequential data privacy litigation of this decade. Facebook has unprecedented global power and reach, and yet it defied the terms and conditions of its consent decree with the Federal Trade Commission and deceived its two billion users about privacy protections for their personal data. Similarly, the Cambridge Analytica defendants (some, but not all, of whom are in bankruptcy proceedings) have disregarded the privacy of individual data and the importance of individuals' ability to engage in unmonitored and unexploited free thought. SEA&L recognizes the important scope and impact of this litigation. If

allowed the privilege of serving in a leadership role, this litigation will receive my dedicated time and attention throughout its duration, plus the support of our Cybersecurity and Privacy Practice and our litigators who have handled other high-profile, complex matters across the country.

(iv) *Ability to work cooperatively with others.* I have decades of experience managing large teams and organizations, both as a federal government senior executive, and managing teams of lawyers across the country and a large practice group within our 400-lawyer firm. I have worked collaboratively in numerous challenging, dynamic contexts, from international government relations, to carrying out a complex investigation across the partisan aisle on Capitol Hill. From all of these experiences, I understand the need for diverse voices and perspectives, including those of women, minorities, persons with disabilities, and members of the LGBTQ community. It is critical that the plaintiffs be represented by counsel who mirror their diversity. I'd be comfortable working with many of the counsel named on the complaints and have attached an addendum indicating mutual support for lead applications of particular counsel.

(v) *Resources available to prosecute this litigation in a timely manner.* SEA&L is considerably larger than most of the firms currently representing plaintiffs in this matter. We have a wealth of seasoned litigators, an entire practice group focuses on cybersecurity and data privacy, and the scope and reach of a 400-lawyer firm. We also have a breadth of internal resources, including a Litigation Support Services team that focuses on complex eDiscovery issues, a major value-add in large-scale litigation such as this matter. Our frequent representation of defendants enhances our ability to zealously advocate for these plaintiffs, as we are skilled in litigating from both sides of complex issues. We routinely litigate with and against major international law firms, and we are better positioned than any other firm in the consolidated complaints to match the resources that defense counsel can bring to bear.

(vi) *Ability to maintain reasonable fees and expenses.* As a firm that is routinely accountable to in-house counsel who are held to tight budgets, SEA&L has decades of experience in managing litigation expenses and fees. Our 400-lawyer size allows us to maximize our internal resources, while maintaining highly competitive rates. If appointed lead counsel, we will bring all of that experience to bear in proactively managing the assignments, time spent, and expenses in this matter in order to ensure that any settlement or award maximizes value to the plaintiffs, including reducing the risk of future harm.

In summary, we bring to this litigation: (1) a lead lawyer with incomparable data privacy and cybersecurity experience, including work focusing on social media platforms, behavioral profiling, data analytics, and micro-targeting; (2) a diverse and inclusive team drawn from our Cybersecurity and Privacy Practice group and 150+ lawyer litigation department; and (3) the resources of a 400-lawyer law firm, including an in-house Litigation Services Support team. We have the confidence to know we're highly qualified to lead this MDL, and the humility to know that it would be a privilege to be entrusted to do it.

Sincerely,



April Falcon Doss

April Falcon Doss, Saul Ewing Arnstein & Lehr

500 E. Pratt St. • Baltimore, MD 21202 • Phone: 410-332-8798 • E-Mail: april.doss@saul.com • @AprilFDoss

OVERVIEW: Partner and Chair of the Cybersecurity and Privacy practice at 400-lawyer firm.

Formerly, lead minority counsel for the Senate investigation into Russian meddling in the 2016 U.S. elections. Former Associate General Counsel for Intelligence Law at NSA. Past law practice includes civil and criminal litigation, business and corporate law, and in-house legal practice in government and higher education. Eleven years managing organizations and teams, including six years managing legal organizations, five years managing multi-site compliance programs, and two years managing privacy-by-design technology. Overseas postings in international relations and foreign policy. Extensive experience in privacy, big data, compliance programs, internal and interagency policy frameworks, and internal investigations.

CURRENT POSITION: Partner and Chair, Cybersecurity and Privacy, Saul Ewing Arnstein & Lehr, 2016-2017, and May, 2018-present. Hired from government in 2016 to lead the expansion of the cybersecurity and data privacy practice group. Left the firm to serve on Capitol Hill (below) and returned in 2018. Advises private sector clients on cybersecurity legal risks and the requirements of U.S. and international privacy laws, including data breaches, General Data Protection Regulation compliance, investigations, and litigation.

PAST POSITIONS:

Senior Minority Counsel for the Russia Investigation, Senate Select Committee on Intelligence., May 2017- April 2018. Lead minority (Democratic) counsel for the SSCI's Russia investigation. Responsible for legal strategy, negotiations with counsel for witnesses and investigated entities, oversight of the U.S. Intelligence Community,

National Security Agency: 2003-2014.

- **Associate General Counsel for Intelligence Law, National Security Agency, 2014-2016.** Federal government senior executive managing a large legal practice group providing time-sensitive legal advice on all aspects of NSA's global intelligence operations, including submissions to the Foreign Intelligence Surveillance Court, intelligence oversight and compliance programs, civil liberties and privacy protections, and new technology development.
- **Technology policy architecture lead:** Developed and implemented a comprehensive framework for legal, policy, and compliance vetting of data analytics. Led a team of professionals incorporating legal and policy compliance requirements into new technologies used for NSA's operations. 2012-2014.
- **Foreign liaison officer to the UK Government intelligence and cybersecurity agency (GCHQ)** in England. Managed two revolutionary efforts that increased the sharing of CT-related information between the US and UK, and implemented and oversaw a complex, multi-location, multi-national compliance effort. 2009-2012.
- **Senior attorney in the NSA Office of General Counsel. 2005-2009.** Lead counsel for new technology development; advised on NSA oversight and operations; handled matters pending before the FISA Court.
- **NSA senior policy officer for information sharing.** Represented NSA in Intelligence Community (IC) efforts to implement the recommendations of the 9/11 Commission and related initiatives. Managed a Congressionally-mandated pilot program that led to groundbreaking sharing of counterterrorism (CT)-related intelligence. 2003-2005.

Assistant and Acting General Counsel, Goucher College, Towson, Maryland, 1998-2001

- Provided all legal advice to the college President, Board, and senior counsel on the full range of administrative, labor, litigation, health and safety, federal regulatory, admissions policy, public relations, and other matters affecting college administration, operations, and management.

Adjunct Faculty, University of Maryland and University of Baltimore Law Schools, 1995-1998

- Taught Appellate Advocacy and Legal Research and Writing to first year law students.

Litigation Associate, Ward Kershaw and Minton, P.A., Baltimore, MD, 1994-1998

- Handled broad range of civil rights, medical malpractice, and maritime law matters.

Deputy Public Defender, San Diego County, 1992-1994

- Represented hundreds of clients and argued dozens of motions and jury trials on criminal matters ranging from petty theft and suspended drivers licenses to drunk driving and capital murder.

EDUCATION

- **Yale University,** Bachelor of Arts, History, *magna cum laude*, distinction in the major. 1989.
- **University of California, Berkeley, Boalt Hall School of Law.** J.D., 1992.
- **Goucher College,** M.F.A., Creative Non-Fiction Writing. 2003.
- **Professional certifications:** Certified Information Systems Security Professional (CISSP) and Certified Information Privacy Professional (CIPP/US).
- **Languages:** Proficient in Spanish and French.

April Falcon Doss, Saul Ewing Arnstein & Lehr

500 E. Pratt St. • Baltimore, MD 21202 • Phone: 410-332-8798 • E-Mail: april.doss@saul.com • @AprilFDoss

SELECTED ARTICLES

- "Quantum Policy," American Bar Association *SciTech Lawyer*, Nov. 2017
- "What intelligence officials really mean when they talk about 'unmasking,'" simultaneously published in *The Washington Post* and on *Lawfare*, April 7, 2017
- "Section 702: Two myths, two concerns, and two final thoughts," *International Association of Privacy Professionals Privacy Perspectives*, March 20, 2017
- "Trump's Social Media Plan: Problematic Law and Policy, Pointless Security," *Lawfare*, March 20, 2017
- "Gorsuch's Originalism in the Age of Bytes And Blockchains," *Law 360*, March 20, 2017
- "Why tech companies don't need to stymie democratic government," *International Association of Privacy Professionals Privacy Perspectives*, January 26, 2017
- "Why the 9th Circuit Was Right in Mohamed Mohamud, and a Startling Thing It May Have Gotten Wrong," *Lawfare*, December 9, 2016
- "We Need to #AudittheVote - and It has Nothing to Do with Who Becomes President," *Lawfare*, November 28, 2016
- "Executive Order 12333, the President-Elect, and the NSA," American Bar Association, *Information Law Journal*, November 21, 2016
- "Computer Crime Laws Need An Update", *Bloomberg Law*, August 16, 2016
- "Why Electronic Data is Different than a Filing Cabinet," *Bloomberg Law*, July 20, 2016

SELECTED SPEAKING ENGAGEMENTS, PRESENTATIONS, AND EVENTS

- "A Call to (H)arms: The Cry for Harmonization of Security and Privacy Laws," April 19, 2018, RSA Conference
- "The Internet of Wild Things: A Mock Trial on the Internet of Things," April 18, 2018, RSA Conference, San Francisco.
- "Data Localization and Cross-Border Discovery," Advanced E-Discovery Institute, Georgetown University Law Center, Nov. 17, 2017
- "Cybersecurity Incident Response When You Didn't Have a Plan," Association of Corporate Counsel, Oct. 17, 2017
- "Quantum Policy," Harvard Belfer Center on Cybersecurity, Oct. 11, 2017
- "Quantum Policy," Keynote address, Information Assurance Symposium, Baltimore, MD, June 2017
- "What the Hack is Going on Here? The Culture of Russian Hacking," International Association of Privacy Professionals (IAPP) Annual Summit, Washington, DC, April 2017.
- "Cybersecurity Trends in 2017," Risk Management Association's Governance, Compliance, and Operational Risk (GCOR) Conference, Cambridge, MA, April 2017.
- "Reauthorization of FISA Amendments Act Section 702," Testimony Before the United States Congress, House Judiciary Committee, March, 2017.
- "The Real \$100 Million Question: What is the Cybersecurity Standard of Care?" RSA Conference, February, 2017.
- "Honesty is the Best Policy: A Mock Trial on What You Say Versus What You Do," RSA Conference, Feb., 2017.
- "The View from the Across the Potomac: Cybersecurity in the Federal Government and Private Sector," keynote at the American Bar Association's Information Security Subcommittee's pre-RSA meeting, February, 2017.
- "Cybersecurity: Changing Landscape and Opportunities," Association of Corporate Counsel, December, 2016.
- "Cybersecurity for Business," PBI Business Law Institute, November, 2016.
- "Trouble on Campus: Playbook for Government Investigations and Crisis Management," Philadelphia, Oct., 2016.
- "Managing Cybersecurity Risk on a Limited Budget," CyberMaryland Conference, October, 2016.
- "Pay Now or Pay More Later: Cyber Threats, Preparedness, and incident Response," Pennsylvania Association of Criminal Defense Lawyers (PACDL) White Collar Practice Seminar, November 2016.
- "Data Protection and Cybersecurity," Real Estate Professionals (RESPRO) Fall Seminar, October, 2016.
- International Intelligence Oversight Forum (IIOF), hosted by the United Nations Special Rapporteur on Privacy, Bucharest, Romania, October, 2016.

ADDENDUM

To: Hon. Judge Chhabria
From: April Falcon Doss, Saul Ewing Arnstein & Lehr
Date: June 21, 2018
Subject: Addendum of Support for Facebook MDL Leadership Application

The following counsel have expressed support for this leadership application:

- Hassan Murphy, Murphy Falcon & Murphy
- Linda Dardarian, Goldstein, Borgen, Dardarian & Ho
- Gary Lynch, Carlson Lynch Sweet Kilpela Carpenter
- Art Murray, The Murray Law Firm
- Karen Reibel, Lockridge, Grindal Nauen, PLLP